S.B.Civil Misc. Appeal No.434/94
Pancha vs. Mohan Lal & ors.

Date of Order: 17.11.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. D.K. Parihar for the appellant.
Mr. Dilip Kawadia for respondent no.2
Mr. Santosh Choudhary for Mr. Anil Bachhawat for respondent no.3.

Heard learned counsel for the parties.

This appeal is against the award dated 28.12.1993 passed by the learned Workmen's Compensation Commissioner, Udaipur in Workmen Compensation Case No.43/89 filed by the claimant, father of the deceased Pancha Ram, who died in road accident on 5.3.1986.The learned Workmen's Compensation Commissioner dismissed the claim petition on the ground that the appellant failed to prove that deceased was in employment of the respondent owner of truck No.RRY 7345. According to the claimant, his son was working as cleaner for the truck No.RRY 7345. The truck met with accident on 5.3.1986. In the accident appellant-applicant's son died. The applicant-appellant has six sons, two daughters and deceased was his eldest son. The appellant claimed Rs.40,000/- as compensation. The claim petition was first filed in the court at Gujarat but it was returned for presentation in the court at Rajasthan. Therefore, it has been presented before the learned Workmen's Compensation Commissioner, Udaipur. The non-claimants owner of the vehicle denied that the appellant's son was cleaner

appointed by him for truck No. RRY 7345. The Insurance Company also filed the detailed reply and submitted that it appears that claim petition has been filed by the claimant in collusion with the owner of the vehicle and according to them, the Insurance Company is not liable to pay the compensation.

Before the learned Workmen's Compensation Commissioner only claimant gave his statement on 21.5.1992 and produce only one document i.e. Post-mortem report of deceased Pancha. It appears from the statement of the sole witness claimant himself that in his statement, he did not even state a single word that from which truck accident occurred, who was the owner of the vehicle and he also did not produce the copy of the F.I.R. so that it can be found out whether his son in fact died in the same accident as alleged by the claimant.

The learned counsel for the appellant submitted that it was the duty of the respondent owner of the truck to produce the relevant record and show that the deceased Pancha was not his employee. The learned counsel for the appellant relied upon the judgment of this Court delivered in the case of Smt. Fatma Begum vs. Bhure Khan (1976 WLN (UC) 492). The said judgment has no application to the facts of the present case. In the said case, the lower court recorded the finding that deceased Ijazuddin was in employment of contractor Bhure Khan. The respondent's contention that he handed over possession of mine to the

department, was not accepted by the court. The respondent's stand was also that work was in fact carried by one Hamid Khan but he did not produce said Hamid Khan nor substantiated the contention by evidence. In the present case, there is no iota of evidence to connect the respondent owner of the truck with the employment of the deceased Pancha because of the simple reason that, as stated above, even the claimant himself has not stated that the deceased was in employment of the respondent owner of the truck.

In view of the above, the finding of fact recorded by the learned Workmen's Compensation Commissioner cannot be interfered with. Hence there is no merit in the appeal and hence appeal of the appellant is dismissed.

(PRAKASH TATIA),J.

mlt.